

AMENDED IN SENATE AUGUST 19, 2010

AMENDED IN SENATE JUNE 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2654

Introduced by Assembly Member Hill

February 19, 2010

An act to amend Section 17533.6 of the Business and Professions Code, relating to solicitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2654, as amended, Hill. Solicitations.

Existing law makes it unlawful for any person, firm, or corporation, or association that is a nongovernmental entity to solicit funds or information by means of a mailing, electronic message, or Internet Web site that contains any term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the nongovernmental entity has an expressed connection with a state or local entity or unless the solicitation and mailing contains a specified disclosure that it is not a governmental document. Existing law also requires a business that solicits the purchase of, or payment for, a service by means of an unsolicited mailing offering to assist the recipient in dealing with a state or local governmental agency to disclose on the envelope and in the mailing that the business is not a governmental agency and is not associated with the governmental agency rereferenced. A violation of these or other provisions related to advertising is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine of up to \$1,000, or both.

This bill would also make it unlawful for these solicitations to contain an emblem or ~~any other language~~ *content* or specified title, trade, or brand names, that reasonably could be interpreted or construed as implying any *federal*, state, or local government connection, approval, or endorsement and would require the disclosures to be conspicuously displayed apart from other print in the solicitation and on the envelope, cover, or wrapper in which the solicitation is mailed, as specified. The bill would *also prohibit that solicitation from containing certain payment provisions unless a specified disclosure is additionally included*. The bill would authorize a person to recover specified damages if the person is harmed from a violation of the provisions regulating the solicitation of funds or information by a nongovernmental entity. The bill would establish specified fines and criminal penalties for a violation of these provisions, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17533.6 of the Business and Professions
2 Code is amended to read:
3 17533.6. (a) It is unlawful for any person, firm, corporation,
4 or association that is a nongovernmental entity to solicit
5 information, or to solicit the purchase of or payment for a product
6 or service, or to solicit the contribution of funds or membership
7 fees, by means of a mailing, electronic message, or Internet Web
8 site that contains a seal, emblem, insignia, trade or brand name,
9 or any other ~~language, term, or symbol~~ *term, symbol, or content*
10 that reasonably could be interpreted or construed as implying ~~any~~
11 ~~state~~ *the federal, state, or local government connection, approval,*
12 or endorsement, unless the requirements of paragraph (1) or (2)
13 have been met, as follows:

1 (1) The nongovernmental entity has an expressed connection
2 with, or the approval or endorsement of, a ~~state~~ *federal, state,* or
3 local government entity, if permitted by other provisions of law.

4 (2) The solicitation meets all of the following requirements:

5 (A) The solicitation conspicuously displays the following
6 disclosure on the front and back of every page of the solicitation:
7 “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED
8 OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND
9 THIS OFFER IS NOT BEING MADE BY AN AGENCY OF
10 THE GOVERNMENT.”

11 (B) In the case of a mailed solicitation, the envelope or outside
12 cover or wrapper in which the matter is mailed conspicuously
13 displays the following disclosure *on the front of the envelope,*
14 *outside cover, or wrapper:*

15 “THIS IS NOT A GOVERNMENT DOCUMENT.”

16 (C) The disclosure in subparagraph (A) shall be displayed
17 conspicuously, as provided in subdivision-~~(f)~~ *(d)*, and immediately
18 below each portion of the solicitation that reasonably could be
19 construed to specify an amount due and payable by the recipient.
20 The disclosure in subparagraph (B) shall be displayed
21 conspicuously, as provided in subdivision-~~(f)~~ *(d)*, and immediately
22 below the area of the envelope, outside cover, or wrapper that is
23 used for a return address. The disclosures in subparagraphs (A)
24 and (B) shall not be preceded, followed, or surrounded by ~~language,~~
25 ~~words, symbols, terms~~ *terms, symbols,* or other content that result
26 in the disclosures not being conspicuous or that introduce, modify,
27 qualify, or explain the text of those disclosures.

28 (D) The solicitation shall not use a title or trade or brand name
29 that reasonably could be interpreted or construed as implying any
30 ~~state~~ *federal, state,* or local government connection, approval, or
31 endorsement, including, but not limited to, use of the ~~word~~ *term*
32 “agency,” “administrative,” “assessor,” “board,” “bureau,”
33 “collector,” “commission,” “committee,” “department,” “division,”
34 “recorder,” “unit,” “state,” “county,” “city,” or “municipal,” or
35 the name of any government agency *or division.*

36 (E) *The solicitation shall not specify a date or time period when*
37 *payment to the soliciting nongovernmental person, firm,*
38 *corporation, or association is due, including, but not limited to,*
39 *use of the terms “due date,” “due now,” “remit by,” “remit*
40 *immediately,” “payment due,” “pay now,” “pay immediately,”*

1 or “pay no later than,” unless the solicitation displays, in the same
2 sentence as the date or time period specified, how the information
3 being solicited will be used, a description of the product or service
4 that is to be provided, and to what government agency it shall be
5 rendered, or how the solicited funds or membership fees will be
6 used, as applicable.

7 ~~(E)~~

8 (F) The solicitation shall not state or imply that payment to any
9 person, firm, corporation, or association that is not a government
10 entity is mandatory or required by law, or state or imply that
11 penalties, fines, or consequences will occur if payment is not made
12 to the soliciting nongovernmental person, firm, corporation, or
13 association.

14 ~~(b) Except as provided in subdivision (c), any business that~~
15 ~~solicits the purchase of, or payment for, a service by means of an~~
16 ~~unsolicited mailing that offers to assist the recipient in dealing~~
17 ~~with a state or local governmental agency shall conspicuously state~~
18 ~~on the envelope and in the mailing that the business is not a~~
19 ~~governmental agency and is not associated with the governmental~~
20 ~~agency referenced.~~

21 ~~(c) Subdivision (b) shall not apply if the business has an~~
22 ~~expressed connection with, or the approval or endorsement of, a~~
23 ~~state or local governmental entity, if permitted by other provisions~~
24 ~~of law.~~

25 ~~(d)~~

26 (b) Notwithstanding Section 17534, any violation of this section
27 is a misdemeanor punishable by imprisonment in a county jail not
28 exceeding six months, or by a fine not exceeding two thousand
29 five hundred dollars (\$2,500), or by both that fine and
30 imprisonment.

31 ~~(e)~~

32 (c) Any person who is harmed as a result of a violation of this
33 section shall be entitled to recover, in addition to any other
34 available remedies, damages in an amount equal to three times the
35 amount solicited.

36 ~~(f)~~

37 (d) For purposes of this section, “conspicuous” or
38 “conspicuously” means displayed apart from other print on the
39 page, envelope, outside cover, or wrapper and in not less than
40 12-point boldface font type in capital letters that is at least 2-point

1 boldface font type sizes larger than the next largest print on the
2 page, envelope, outside cover, or wrapper and in contrasting type,
3 layout, font, or color in a manner that clearly calls attention to the
4 language.

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14
15
16 CORRECTIONS:
17 Heading—Line 2.
18